

HUBERT A. RIEBOLD

IBLA 94-512

Decided December 31, 1996

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees. IMC 30783-IMC 30785.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees:
Generally–Notice: Generally–Regulations: Generally–Statutes

The responsibility for satisfying the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), resided with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress mandated that, unless a claimant timely filed documents evidencing entitlement to a small miner exemption, failure to timely make the annual payment of the claim rental fee as required by the Act would conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Neither a claimant's lack of actual knowledge of the statutory requirement to pay rental fees or submit evidence to qualify for the small miner exemption nor BLM's failure to advise the claimant of this statutory requirement excused the claimant's lack of compliance with the statutory mandate since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Richard H. Stevens, Esq., Springfield, Missouri, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Appearing on his own behalf and as partner of the Payntor Claims Partnership, Hubert A. Riebold has appealed from a May 2, 1994, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the Basin Nos. 1, 5, and 7 lode mining claims (IMC 30783 through IMC 30785)

abandoned and void for failure to pay rental in the amount of \$100 per claim or to submit a certification of exemption from the payment of rental fees for the 1993 and 1994 assessment years.

The subject mining claims, situated in T. 6 N., R. 12 E., Boise Meridian, Elmore County, Idaho, were located in 1940, 1951, and 1967, respectively, and are within the Sawtooth Primitive Area managed by the U.S. Forest Service. The required notices of annual assessment work have been duly filed for each of the claims since 1979, including an affidavit of labor for the assessment year ending September 1, 1993, received on September 7, 1994.

In its decision, BLM held that, in accordance with the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), absent the timely submission of documents evidencing entitlement to a small miner exemption, claimants were required to pay the \$100 per claim rental fees for both the 1993 and 1994 assessment years on or before August 31, 1993, and that failure to submit those fees or to furnish a certification of exemption from payment constituted a statutory abandonment of the claims.

On appeal, Riebold asserts that he was not aware of any change in the law and contends that BLM's files do not show that he was notified of the need to pay rental. He argues that BLM's actions violate the Constitution and explains that he has faithfully filed the required annual documents. He notes that the claims are located within a wilderness area and cannot be relocated.

[1] In adopting the Act of October 5, 1992, supra, Congress directed that:

[F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, the so-called small miner exemption. Id. Additionally, the Act

directed "[t]hat failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379.

On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act. 58 FR 38186. These regulations required a claimant to pay, on or before August 31, 1993, a nonrefundable rental fee of \$100 for each mining claim, mill site, or tunnel site located on or before October 5, 1992, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental of \$200 per claim. 43 CFR 3833.1-5(b) (1993). The regulations included sections governing rental fee exemption qualifications and filing requirements. 43 CFR 3833.1-6, 3833.1-7 (1993). The regulations further provided, in language essentially paralleling the statutory mandate, that failure to pay the required rental fee or to timely file the required rental fee exemption documents "shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void." 43 CFR 3833.4(a)(2) (1993).

If a mining claimant did not timely request and qualify for a small miner exemption from the rental fee requirement in conformity with the statute and regulations, the failure to submit the fee gave rise to a conclusive presumption of abandonment. See William B. Wray, 129 IBLA 173, 175 (1994); Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). As we have noted on a number of occasions, the Department has no authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences, regardless of any mitigating circumstances. See, e.g., Maurine M. Carpenter, 136 IBLA 266 (1996); Chester Wittwer, 136 IBLA 96 (1996). Moreover, while the Board is not an appropriate forum to consider the constitutionality of Federal legislation (see Idaho Mining & Development Co., 132 IBLA 29, 34 (1995); Amerada Hess Corp., 128 IBLA 94, 98 (1993)), we do note that a constitutional challenge to the imposition of rental fees was rejected by the United States Court of Appeals for the Federal Circuit in Kunkes v. United States, 78 F.3d 1549 (1996), cert. denied 65 USLW 3257 (Oct. 7, 1996).

In any event, neither Riebold's lack of knowledge of the statutory rental fee requirement nor BLM's failure to directly notify him of that requirement excuses his lack of compliance with the statutory mandate. All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). BLM, therefore, had no affirmative obligation to provide Riebold with any particular notice of the changes in the law since Riebold was deemed to know the contents of the Act and duly promulgated regulations. See David & Roirdon Doremus, 61 IBLA 367, 368 (1982). We must conclude, therefore, that, inasmuch as it is undisputed that Riebold neither paid the rental fees required by the Act nor timely submitted the filings required to qualify for the small miner exemption, BLM properly declared his mining claims abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur.

Will A. Irwin
Administrative Judge

